

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

THE TWO WAY SHOP

220 Columbia Dr. E.

Kennewick, Washington 99336

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File No. EB-99-ST-439

NAL/Acct. No. 915ST0007

FORFEITURE ORDER

Adopted: April 6, 2000

Released: April 7, 2000

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) against the Two Way Shop ("Two Way") for willful and repeated violations of Section 302 of the Communications Act of 1934, as amended ("Act"),¹ and Sections 2.803 and 2.815 of the of the Commission's Rules ("Rules").² These violations involve Two Way's offer for sale of linear amplifiers capable of operation in the 26.965 to 27.405 MHz frequency band.

2. On July 14, 1999, the Commission's Seattle, Washington, Field Office, issued the referenced Notice of Apparent Liability for Forfeiture ("NAL") for a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Two Way for the noted violations.³ Patrick Cleppe, owner and operator of Two Way, filed a response to the NAL on July 26, 1999.

II. BACKGROUND

3. Two Way is a consumer electronics dealer in Kennewick, Washington. On March 19, 1999, an FCC agent from the Commission's Seattle Field Office, who was posing as a member of the general public, visited Two Way's place of business at 220 Columbia Drive E., Kennewick, Washington. During that visit, a salesman who the agent believes is named Gary Greenfield offered to sell an external radio frequency power amplifier -- commonly known as a "linear amplifier" -- to the agent. The linear amplifier offered to the agent was capable of operation in the 26.965 to 27.405 MHz frequency band, which is assigned to citizens band radio ("CB") operators. Such a linear amplifier is used to increase the power of CB stations beyond the authorized level. On May 15, 1999, two FCC agents from the Commission's Seattle Field Office, who were posing as members of the general public, visited Two Way's

¹ 47 U.S.C. § 302.

² 47 C.F.R. §§ 2.803 and 2.815.

³ *Notice of Apparent Liability for Forfeiture*, NAL Acct. No. 915ST0007 (Compl. & Inf. Bur., Seattle Office Released July 16, 1999).

place of business. On this occasion, a salesman, who the agents believe to be Mr. Cleppe, showed the agents Galaxy XL350 and Palomar 80 linear amplifiers and told the agents that an additional model (Galaxy XL250) was expected to be in stock later that day. The salesman offered to sell these linear amplifiers, which were capable of operation in the 26.965 to 27.405 MHz frequency band, to the agents. Section 302 of the Act, and Sections 2.803 and 2.815 of the Rules prohibit the sale or offer for sale of linear amplifiers that are capable of operation in the 26.965 to 27.405 MHz frequency band. On July 14, 1999, the District Director, Seattle Field Office, issued an NAL to Two Way in the amount of \$7,000 for willful and repeated violations of Section 302 of the Act, which prohibits the sale or offer for sale of transmitting equipment not in compliance with the FCC rules, and Sections 2.803 and 2.815 of the Rules, which prohibit the sale or offer for sale of linear amplifiers that are capable of operation in the 26.965 to 27.405 MHz frequency band.

4. On July 26, 1999, the Commission received the response to the NAL, in which Two Way requests the cancellation of the proposed forfeiture. Two Way asserts: that Gary Greenfield was not an employee of Two Way at any time during March 1999; that Two Way is a proprietorship which has never had any employees;⁴ that its business records indicate it never purchased any linear amplifiers; and that Two Way collects sales taxes and charges \$38.50 for installation and tuning.⁵ In addition, Two Way states, if its response does not close this matter, it is making a "motion for Discovery."

III. DISCUSSION

5. As the NAL explicitly states, the forfeiture amount in this case was assessed in accordance with Section 503 of the Act,⁶ Section 1.80 of the Rules,⁷ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, FCC 99-407, (Released Dec. 28, 1999) ("*Policy Statement*"). In examining Two Way's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸

6. The claims made in Two Way's attack upon the factual basis for the NAL are either immaterial or are directly contradicted by the observations of FCC agents. The agents who went to Two Way's place of business observed linear amplifiers on the premises and received offers to sell linear amplifiers from salespersons believed to be Mr. Greenfield and Mr. Cleppe. This is sufficient to establish the violations alleged in the NAL and contradicts the claim that Two Way did not possess any linear amplifiers. It is not material whether the persons who made the offers to sell were employees of Two Way or proprietors.

⁴ The NAL states that an employee of Two Way made offers to sell on May 15, 1999.

⁵ The NAL states that Two Way proposed a cash only transaction with no sales tax and offered installation and tuning for \$20.00.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 503(b)(2)(D).

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7. Discovery is available in Commission adjudication proceedings that have been designated for hearing.⁹ Since this case has not been designated for hearing, Two Way's discovery motion is inappropriate.

8. We have examined Two Way's response to the NAL pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Two Way has failed to justify cancellation or reduction of the proposed forfeiture amount. Therefore, we affirm the forfeiture of seven thousand dollars (\$7,000).

IV. ORDERING CLAUSES

9. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁰ the Two Way Shop, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand (\$7,000) for the repeated and willful violation of Section 302 of the Act, which prohibits the sale or offer for sale of transmitting equipment not in compliance with the FCC rules, and Sections 2.803 and 2.815 of the Rules, which prohibit the sale or offer for sale of linear amplifiers that are capable of operation in the 26.965 to 27.405 MHz frequency band.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) days of the release of this Order. If the forfeiture is not paid within the specified period, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹¹ Payment may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the "Federal Communications Commission," to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 915ST0007. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.

11. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by certified mail, return receipt requested, to Mr. Patrick Cleppe, the Two Way Shop, 220 Columbia Drive E., Kennewick, Washington 99336.

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David H. Solomon
Chief, Enforcement Bureau

⁹ See 47 C.F.R. §§ 1.311-1.325.

¹⁰ 47 C.F.R. §§ 0.111, 0.311 and 1.80(f)(4).

¹¹ 47 U.S.C. § 504(a).